

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

v.

21-cr-10035-ADB

FAITH NEWTON,

Defendant.

**DEFENDANT’S MOTION TO EXCLUDE
GOVERNMENT EXHIBITS 527, 528, 531 AND 706-710**

Defendant Faith Newton (“Ms. Newton”) hereby moves to exclude the following eight exhibits on the government’s Exhibit List because they contain inadmissible hearsay and are not relevant to the counts charged against Ms. Newton.

In furtherance hereof, Ms. Newton states as follows:

1. The government’s Exhibit List includes the following documents, listed below with the government’s descriptions thereof and hereinafter referred to as the “Subject Exhibits”:

| Government Exhibit Number | Description |
|---------------------------|--|
| Ex. 527 | Communication Note re Dr. Milton Drake’s inquiry about employment status of P. O. (not working as a landscaper since getting skilled nursing services), Dated 11/10/2015 |
| Ex. 528 | Communication Note conversation with Dr. Milton Drake and the doctor recommends discharge of P. O. from skilled nursing services, Dated 11/11/2015 |
| Ex. 531 | Oasis Start of Care signed by C. Githinji (2014.03.07) |
| Ex. 706 | K. U. -- Home Health Certification and Plan of Care (12/20/2015 to 02/17/2016) |
| Ex. 707 | K. U. -- Home Health Certification and Plan of Care (02/18/2016 to 4/17/2016) |
| Ex. 708 | K. U. -- Skilled Nurse Visit Note (12/03/2015) |
| Ex. 709 | K. U. -- Skilled Nurse Visit Note (12/04/2015) |
| Ex. 710 | K. U. -- Skilled Nurse Visit Note (12/20/2015) |

2. The documents contain inadmissible hearsay. For instance, Exhibit 527 is a Communication Note from Maxwell Ngigi, LPN concerning patient P.O. Ngigi has never been identified as an unindicted coconspirator. In this note, Ngigi relays information he was allegedly told on the phone by his patient. Similarly, Exhibit 528 is another Communication Note in which Ngigi relays a phone call he received from the case manager at his patient's doctors' office. The contents of these conversations are hearsay within hearsay and must be excluded.

3. The government cannot justify the introduction of the Subject Exhibits as "statements of a coconspirator ... made during the conspiracy and in furtherance of that conspiracy." *United States v. Weadick*, 15 F.4th 1, 8 (1st Cir. 2021); Fed. R. Evid. 801(d)(2)(A), 801(d)(2)(E). Of the eight Subject Exhibits, only one—Exhibit 531—is signed by someone identified by the government as an unindicted coconspirator. Ex. 531. As for Exhibit 531, signed by Charles Githinji, this too is inadmissible pursuant to Fed. R. Evid. 801(d)(2). Although Mr. Githinji was disclosed by the government as an unindicted coconspirator, the government has not provided any external evidence to support his being a coconspirator besides the notes themselves. Mr. Githinji is not on the government's witness list.

4. Because there is no evidence connecting the authors of these notes to the charged conspiracy besides their employment at Arbor, these notes have at most minimal relevance to the conspiracies as charged in this case. None of these documents are signed by Ms. Newton, and none are signed by anyone who the government intends to call as a witness in this case.

5. Given the volume of Arbor records already admitted in this case, allowing these documents – again, documents not signed by Ms. Newton, her co-defendant, or any unindicted coconspirator – the probative value of these exhibits is substantially outweighed by the danger of

unfair prejudice, undue delay, wasting time, and needlessly presenting cumulative evidence.
Fed. R. Evid. 403.

Conclusion

For the reasons stated herein, this Court should exclude the Subject Exhibits.

Respectfully submitted,

/s/ George W. Vien

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1, I certify that I conferred with counsel for the government and attempted in good faith to resolve or narrow the issue.

/s/ George W. Vien
George W. Vien

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), on June 30, 2023.

/s/ George W. Vien
George W. Vien